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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

SERAFIN TORRES URBINA,

Defendant and Appellant.

B289465

(Los Angeles County  
Super. Ct. No. KA058222)

APPEAL from an order of the Superior Court of Los Angeles County. Jose A. Rodriguez, Commissioner. Affirmed.

Myra Sun, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews and Mary Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

In 2012, Serafin Torres Urbina, who is a Mexican citizen, pleaded no contest to one count of driving while having 0.08 percent or more of alcohol in his blood (Veh. Code, § 23152, subd. (b)). After Urbina was released from jail, federal immigration authorities initiated removal proceedings against him. In response, Urbina filed a motion in superior court to vacate the 2012 conviction on the basis that he was mistaken as to the immigration consequences of his plea. The trial court denied the motion, and Urbina appealed. We affirm

### **FACTUAL AND PROCEDURAL BACKGROUND**

Urbina is a Mexican citizen and immigrated to the United States in 1985. In 2002, he was charged by felony complaint with driving under the influence of alcohol (Veh. Code, § 23152, subd. (a)), driving while having 0.08 percent or more of alcohol in his blood (Veh. Code, § 23152, subd. (b)), and driving while his license was suspended because of a prior drinking and driving conviction (Veh. Code, § 14601.2, subd. (a)). It was further alleged that, between 1997 and 1999, Urbina suffered four prior convictions under Vehicle Code section 23152, and three prior convictions under Vehicle Code section 14601.2.

Urbina failed to appear at his arraignment, and the court issued a warrant for his arrest. Urbina first appeared in the case in August 2012. Soon thereafter, he pleaded no contest to one count of driving while having 0.08 percent or more of alcohol in his blood, in exchange for a sentence of 16 months in county jail.

Before entering his plea, Urbina signed a plea form indicating he discussed the immigration consequences of the plea with his counsel and understood the plea “will result in . . . deportation, exclusion from admission or reentry to the United States, and denial of naturalization and amnesty.” At the plea

hearing, the prosecutor informed Urbina that “if you’re not a United States citizen, your plea today will result in deportation, denial of reentry into the country, denial of naturalization, and denial of amnesty.” Urbina responded that he understood these consequences. The trial court found Urbina’s waivers were made “knowingly, intelligently and voluntarily . . . with full knowledge of the consequences of the plea.” The court accepted Urbina’s plea, found him guilty, and sentenced him to 16 months in county jail.

Upon Urbina’s release from jail, federal immigration authorities initiated removal proceedings against him. Urbina applied for cancellation of removal, but the request was denied due to the fact that his 2012 conviction resulted in his incarceration for more than 180 days. (See 8 U.S.C. §§ 1229b(b)(1)(B), 1101(f)(7).)

On June 14, 2017, Urbina filed in superior court a motion to vacate his 2012 conviction or sentence pursuant to Penal Code section 1473.7.<sup>1</sup> At the hearing on the motion, Urbina testified that when he pleaded no contest, he did not realize a conviction would result in deportation or prevent him from obtaining legal status in the United States. Urbina explained that he had previously been convicted of similar offenses without being deported, despite having received admonitions that the convictions would result in deportation. Urbina had also never heard of anyone in the immigrant community who had been deported for a similar type of conviction.

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<sup>1</sup> All future undesignated statutory references are to the Penal Code.

According to Urbina, had he realized the full immigration consequences of his plea, he would have asked his counsel to handle the case differently. Urbina explained that remaining in the United States was important to him at the time because he had six children and a wife residing in the United States with legal status. Urbina also had a pending application for permanent residency.

The superior court denied Urbina's motion, finding he "fully well knew the consequences that the plea would in fact result in his deportation." The court stressed the fact that Urbina indicated at the plea hearing that he understood his plea would result in deportation. The court also noted that Urbina had previously been warned of the immigration consequences of similar convictions in connection with his prior drinking and driving cases.

Urbina timely appealed.

## **DISCUSSION**

Urbina contends the trial court erroneously failed to consider evidence that he mistakenly believed his conviction would not lead to deportation. We disagree.

### **I. Legal Principles and Standard of Review**

Section 1473.7 provides, in pertinent part: "A person no longer imprisoned or restrained may prosecute a motion to vacate a conviction or sentence [if] . . . [t]he conviction or sentence is legally invalid due to a prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a plea of guilty or nolo contendere." (§ 1473.7, subd. (a)(1).) The statute "allows a defendant, who is no longer in custody, to challenge his or her conviction based on a mistake of

law regarding the immigration consequences of a guilty plea or ineffective assistance of counsel in properly advising the defendant of the consequences when the defendant learns of the error postcustody.” (*People v. Perez* (2018) 19 Cal.App.5th 818, 828.) The burden is on the moving party to show, by a preponderance of the evidence, that he or she is entitled to relief. (*Id.* at p. 829.) “In granting or denying the motion, the court must specify the basis for its conclusion.” (§ 1473.7, subd. (e)(2).)

The parties urge us to review the trial court’s order for abuse of discretion, which is the standard of review for orders denying motions to withdraw pleas under sections 1016.5 and 1018. (See *People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 192; *People v. Patterson* (2017) 2 Cal.5th 885, 894.) We agree that abuse of discretion is the correct standard of review where, as here, the defendant seeks relief under section 1473.7, but does not claim a denial of a constitutional right.<sup>2</sup> (Cf. *People v. Ogunmowo* (2018) 23 Cal.App.5th 67, 76 [finding abuse of discretion standard inapplicable where a section 1473.7 claim is based on the violation of a constitutional right, rather than a statutory right].) Under this standard, the trial court’s ruling will not be disturbed unless the court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice. (*People v. Shaw* (1998) 64 Cal.App.4th 492, 496.) We must also adopt the trial court’s factual findings if substantial evidence supports them. (*People v. Fairbank* (1997) 16 Cal.4th 1223, 1254.)

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<sup>2</sup> Urbina contends his motion was not premised on ineffective assistance of counsel.

## **II. Analysis**

Urbina asserts the trial court erred in failing to consider testimony that his previous convictions did not result in deportation, which led him to believe his 2012 plea would also not result in deportation. According to Urbina, his prior experiences informed his personal perceptions of the immigration consequences of his plea, and outweighed the warnings he received from his counsel and the court. He contends the testimony established that he was operating under a mistake of law when he entered the no contest plea, and it was an abuse of discretion for the trial court not to consider it. We find no error.

The record does not support Urbina's contention that the trial court failed to consider his testimony. The reporter's transcript of the hearing shows the court permitted Urbina to testify fully about how his prior experiences led him to believe his plea would not result in deportation. The court then heard argument from Urbina's counsel as to how this testimony entitled him to relief under section 1473.7. At no point did the court indicate, explicitly or implicitly, that it was excluding, or otherwise declining to consider, Urbina's testimony or his counsel's argument. Nor is the fact that the court did not expressly refer to Urbina's testimony when it issued its ruling implicit proof that it declined to consider the evidence. Although the court must specify the basis for its decision denying a motion under section 1473.7, it is not required to discuss the weight given to each piece of evidence. Here, the court sufficiently explained that it was denying the motion based on its factual finding that Urbina knew the immigration consequences of his plea.

There is also no merit to Urbina's suggestion that his testimony compelled a finding that he was operating under a mistake of law when he entered his plea. "[W]here the issue on appeal turns on a failure of proof at trial, the question for a reviewing court becomes whether the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant's evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.' [Citation.]" (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) Here, Urbina's testimony was contradicted. The People presented evidence that Urbina twice indicated, prior to entering his plea, that he understood the immigration consequences of his plea. First, Urbina signed a plea form stating he was aware his plea would result in "deportation, exclusion from admission or reentry to the United States, and denial of naturalization and amnesty." Then, at the plea hearing, Urbina again indicated he understood his plea would "result in deportation, denial of reentry into the country, denial of naturalization, and denial of amnesty." It was the exclusive province of the trial court to resolve the conflict between this evidence and Urbina's testimony that he did not realize his plea would result in deportation. (See *People v. Solomon* (2010) 49 Cal.4th 792, 818.) To the extent Urbina urges us to reweigh that evidence, we decline the invitation. (See *People v. Whisenhunt* (2008) 44 Cal.4th 174, 200 [reviewing court does not reweigh evidence or reevaluate a witness's credibility].) The trial court did not abuse its discretion.<sup>3</sup>

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<sup>3</sup> Because we conclude the trial court did not abuse its

**DISPOSITION**

The order is affirmed.

BIGELOW, P. J.

We Concur:

RUBIN, J.\*

GRIMES, J.

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discretion in finding Urbina knew the immigration consequences of his plea, we need not consider Urbina's arguments relating to prejudice.

\* Presiding Justice of the Court of Appeal, Second Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.